

AMENDMENT NO. _____ Calendar No. _____

Purpose: To amend the Immigration and Nationality Act to provide for extensions of detention of certain aliens ordered removed, and for other purposes.

IN THE SENATE OF THE UNITED STATES—113th Cong., 1st Sess.

S. 744

To provide for comprehensive immigration reform and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. GRASSLEY

Viz:

1 On page 672, between lines 12 and 13, insert the fol-
2 lowing:

3 **SEC. 3720. DETENTION OF DANGEROUS ALIENS.**

4 (a) SHORT TITLE.—This section may be cited as the
5 “Keep Our Communities Safe Act of 2013”.

6 (b) SENSE OF CONGRESS.—It is the sense of Con-
7 gress that—

8 (1) this section should ensure that Constitu-
9 tional rights are upheld and protected;

10 (2) it is the intention of the Congress to uphold
11 the Constitutional principles of due process; and

1 (3) due process of the law is a right afforded
2 to everyone in the United States.

3 (c) DETENTION OF ALIENS DURING REMOVAL PRO-
4 CEEDINGS.—

5 (1) CLERICAL AMENDMENT.—Section 236 (8
6 U.S.C. 1226) is amended—

7 (A) by striking “Attorney General” each
8 place it appears (except in the second place it
9 appears in subsection (a)) and inserting “Sec-
10 retary of Homeland Security”;

11 (B) in subsection (a), by inserting “the
12 Secretary of Homeland Security or” before “the
13 Attorney General—”; and

14 (C) in subsection (e), by striking “Attorney
15 General’s” and inserting “Secretary of Home-
16 land Security’s”.

17 (2) LENGTH OF DETENTION.—Section 236 (8
18 U.S.C. 1226) is amended by adding at the end the
19 following:

20 “(f) LENGTH OF DETENTION.—

21 “(1) Notwithstanding any other provision of
22 this section, an alien may be detained under this
23 section for any period, without limitation, except as
24 provided in subsection (h), until the alien is subject
25 to a final order of removal.

1 “(2) The length of detention under this section
2 shall not affect detention under section 241 of this
3 Act.”.

4 (3) DETENTION OF CRIMINAL ALIENS.—Section
5 236(c)(1) (8 U.S.C. 1226(c)(1)) is amended, by
6 striking the undesignated matter following subpara-
7 graph (D) and inserting the following:

8 “any time after the alien is released, without regard
9 to whether an alien is released related to any activ-
10 ity, offense, or conviction described in this para-
11 graph; to whether the alien is released on parole, su-
12 pervised release, or probation; or to whether the
13 alien may be arrested or imprisoned again for the
14 same offense. If the activity described in this para-
15 graph does not result in the alien being taken into
16 custody by any person other than the Secretary,
17 then when the alien is brought to the attention of
18 the Secretary or when the Secretary determines it is
19 practical to take such alien into custody, the Sec-
20 retary shall take such alien into custody.”.

21 (4) ADMINISTRATIVE REVIEW.—Section 236 (8
22 U.S.C. 1226) is amended by adding at the end the
23 following:

24 “(g) ADMINISTRATIVE REVIEW.—

1 “(1) The Attorney General’s review of the Sec-
2 retary’s custody determinations under section 236(a)
3 shall be limited to whether the alien may be de-
4 tained, released on bond (of at least \$1,500 with se-
5 curity approved by the Secretary), or released with
6 no bond.

7 “(2) The Attorney General’s review of the Sec-
8 retary’s custody determinations for the following
9 classes of aliens:

10 “(A) Aliens in exclusion proceedings.

11 “(B) Aliens described in sections 212(a)(3)
12 and 237(a)(4).

13 “(C) Aliens described in section 236(c).

14 “(D) Aliens in deportation proceedings
15 subject to section 242(a)(2) of the Act (as in
16 effect prior to April 1, 1997, and as amended
17 by section 440(c) of Public Law 104–132); is
18 limited to a determination of whether the alien
19 is properly included in such category.

20 “(h) RELEASE ON BOND.—

21 “(1) IN GENERAL.—An alien detained under
22 subsection (a) may seek release on bond. No bond
23 may be granted except to an alien who establishes
24 by clear and convincing evidence that the alien is not

1 a flight risk or a risk to another person or the com-
2 munity.

3 “(2) CERTAIN ALIENS INELIGIBLE.—No alien
4 detained under subsection (c) may seek release on
5 bond.”.

6 (5) CLERICAL AMENDMENTS.—Section 236 (8
7 U.S.C. 1226) is amended—

8 (A) in subsection (a)(2)(B), by striking
9 “conditional parole” and inserting “recog-
10 nizance”; and

11 (B) in subsection (b), by striking “parole”
12 and inserting “recognizance”.

13 (d) ALIENS ORDERED REMOVED.—Section 241(a) (8
14 U.S.C. 1231(a)) is amended—

15 (1) by striking “Attorney General” each place
16 it appears, except for the first place it appears in
17 paragraph (4)(B)(i), and inserting “Secretary of
18 Homeland Security”;

19 (2) in paragraph (1)—

20 (A) by striking subparagraphs (B) and (C)
21 and inserting the following:

22 “(B) BEGINNING OF PERIOD.—The re-
23 moval period begins on the latest of—

24 “(i) the date on which the order of re-
25 moval becomes administratively final;

1 “(ii) the date on which the alien is
2 taken into such custody if the alien is not
3 in the custody of the Secretary on the date
4 on which the order of removal becomes ad-
5 ministratively final; and

6 “(iii) the date on which the alien is
7 taken into the custody of the Secretary
8 after the alien is released from detention
9 or confinement if the alien is detained or
10 confined (except for an immigration proc-
11 ess) on the date on which the order of re-
12 moval becomes administratively final.

13 “(C) SUSPENSION OF PERIOD.—

14 “(i) EXTENSION.—The removal period
15 shall be extended beyond a period of 90
16 days and the Secretary may, in the Sec-
17 retary’s sole discretion, keep the alien in
18 detention during such extended period if—

19 “(I) the alien fails or refuses to
20 make all reasonable efforts to comply
21 with the removal order, or to fully co-
22 operate with the Secretary’s efforts to
23 establish the alien’s identity and carry
24 out the removal order, including mak-
25 ing timely application in good faith

1 for travel or other documents nec-
2 essary to the alien's departure or con-
3 spires or acts to prevent the alien's
4 removal that is subject to an order of
5 removal;

6 “(II) a court, the Board of Immi-
7 gration Appeals, or an immigration
8 judge orders a stay of removal of an
9 alien who is subject to an administra-
10 tively final order of removal;

11 “(III) the Secretary transfers
12 custody of the alien pursuant to law
13 to another Federal agency or a State
14 or local government agency in connec-
15 tion with the official duties of such
16 agency; or

17 “(IV) a court or the Board of
18 Immigration Appeals orders a remand
19 to an immigration judge or the Board
20 of Immigration Appeals, during the
21 time period when the case is pending
22 a decision on remand (with the re-
23 moval period beginning anew on the
24 date that the alien is ordered removed
25 on remand).

1 “(ii) RENEWAL.—If the removal pe-
2 riod has been extended under clause (i), a
3 new removal period shall be deemed to
4 have begun on the date on which—

5 “(I) the alien makes all reason-
6 able efforts to comply with the re-
7 moval order, or to fully cooperate with
8 the Secretary’s efforts to establish the
9 alien’s identity and carry out the re-
10 moval order;

11 “(II) the stay of removal is no
12 longer in effect; or

13 “(III) the alien is returned to the
14 custody of the Secretary.

15 “(iii) MANDATORY DETENTION FOR
16 CERTAIN ALIENS.—The Secretary shall
17 keep an alien described in subparagraphs
18 (A) through (D) of section 236(c)(1) in de-
19 tention during the extended period de-
20 scribed in clause (i).

21 “(iv) SOLE FORM OF RELIEF.—An
22 alien may only seek relief from detention
23 under this subparagraph by filing an appli-
24 cation for a writ of habeas corpus in ac-
25 cordance with chapter 153 of title 28,

1 United States Code. No alien whose period
2 of detention is extended under this sub-
3 paragraph shall have the right to seek re-
4 lease on bond.”;

5 (3) in paragraph (3)—

6 (A) in the matter preceding subparagraph
7 (A), by inserting “or is not detained pursuant
8 to paragraph (6)” after “the removal period”;
9 and

10 (B) by amending subparagraph (D) to
11 read as follows:

12 “(D) to obey reasonable restrictions on the
13 alien’s conduct or activities that the Secretary
14 prescribes for the alien, in order to prevent the
15 alien from absconding, for the protection of the
16 community, or for other purposes related to the
17 enforcement of the immigration laws.”;

18 (4) in paragraph (4)(A), by striking “paragraph
19 (2)” and inserting “subparagraph (B)”;

20 (5) by amending paragraph (6) to read as fol-
21 lows:

22 “(6) ADDITIONAL RULES FOR DETENTION OR
23 RELEASE OF CERTAIN ALIENS.—

24 “(A) DETENTION REVIEW PROCESS FOR
25 COOPERATIVE ALIENS ESTABLISHED.—For an

alien who is not otherwise subject to mandatory detention, who has made all reasonable efforts to comply with a removal order and to cooperate fully with the Secretary of Homeland Security's efforts to establish the alien's identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien's departure, and who has not conspired or acted to prevent removal, the Secretary shall establish an administrative review process to determine whether the alien should be detained or released on conditions. The Secretary shall make a determination whether to release an alien after the removal period in accordance with subparagraph (B). The determination shall include consideration of any evidence submitted by the alien, and may include consideration of any other evidence, including any information or assistance provided by the Secretary of State or other Federal official and any other information available to the Secretary of Homeland Security pertaining to the ability to remove the alien.

“(B) AUTHORITY TO DETAIN BEYOND REMOVAL PERIOD.—

1 “(i) IN GENERAL.—The Secretary of
2 Homeland Security, in the exercise of the
3 Secretary’s sole discretion, may continue to
4 detain an alien for 90 days beyond the re-
5 moval period (including any extension of
6 the removal period under paragraph
7 (1)(C)). An alien whose detention is ex-
8 tended under this subparagraph shall have
9 no right to seek release on bond.

10 “(ii) SPECIFIC CIRCUMSTANCES.—The
11 Secretary of Homeland Security, in the ex-
12 ercise of the Secretary’s sole discretion,
13 may continue to detain an alien beyond the
14 90 days authorized under clause (i)—

15 “(I) until the alien is removed, if
16 the Secretary, in the Secretary’s sole
17 discretion, determines that there is a
18 significant likelihood that the alien—

19 “(aa) will be removed in the
20 reasonably foreseeable future; or

21 “(bb) would be removed in
22 the reasonably foreseeable future,
23 or would have been removed, but
24 for the alien’s failure or refusal
25 to make all reasonable efforts to

1 comply with the removal order,
2 or to cooperate fully with the
3 Secretary's efforts to establish
4 the alien's identity and carry out
5 the removal order, including
6 making timely application in
7 good faith for travel or other doc-
8 uments necessary to the alien's
9 departure, or conspires or acts to
10 prevent removal;

11 “(II) until the alien is removed,
12 if the Secretary of Homeland Security
13 certifies in writing—

14 “(aa) in consultation with
15 the Secretary of Health and
16 Human Services, that the alien
17 has a highly contagious disease
18 that poses a threat to public safe-
19 ty;

20 “(bb) after receipt of a writ-
21 ten recommendation from the
22 Secretary of State, that release
23 of the alien is likely to have seri-
24 ous adverse foreign policy con-
25 sequences for the United States;

1 “(cc) based on information
2 available to the Secretary of
3 Homeland Security (including
4 classified, sensitive, or national
5 security information, and without
6 regard to the grounds upon
7 which the alien was ordered re-
8 moved), that there is reason to
9 believe that the release of the
10 alien would threaten the national
11 security of the United States; or

12 “(dd) that the release of the
13 alien will threaten the safety of
14 the community or any person,
15 conditions of release cannot rea-
16 sonably be expected to ensure the
17 safety of the community or any
18 person, and

19 “(AA) the alien has
20 been convicted of 1 or more
21 aggravated felonies (as de-
22 fined in section
23 101(a)(43)(A)) or of 1 or
24 more crimes identified by
25 the Secretary of Homeland

1 Security by regulation, or of
2 1 or more attempts or con-
3 spiracies to commit any such
4 aggravated felonies or such
5 identified crimes, if the ag-
6 gregate term of imprison-
7 ment for such attempts or
8 conspiracies is at least 5
9 years; or

10 “(BB) the alien has
11 committed 1 or more crimes
12 of violence (as defined in
13 section 16 of title 18,
14 United States Code, but not
15 including a purely political
16 offense) and, because of a
17 mental condition or person-
18 ality disorder and behavior
19 associated with that condi-
20 tion or disorder, the alien is
21 likely to engage in acts of vi-
22 olence in the future; or

23 “(III) pending a certification
24 under subclause (II), if the Secretary
25 of Homeland Security has initiated

1 the administrative review process not
2 later than 30 days after the expiration
3 of the removal period (including any
4 extension of the removal period under
5 paragraph (1)(C)).

6 “(iii) NO RIGHT TO BOND HEARING.—
7 An alien whose detention is extended under
8 this subparagraph shall have no right to
9 seek release on bond, including by reason
10 of a certification under clause (ii)(II).

11 “(C) RENEWAL AND DELEGATION OF CER-
12 TIFICATION.—

13 “(i) RENEWAL.—The Secretary of
14 Homeland Security may renew a certifi-
15 cation under subparagraph (B)(ii)(II)
16 every 6 months, after providing an oppor-
17 tunity for the alien to request reconsider-
18 ation of the certification and to submit
19 documents or other evidence in support of
20 that request. If the Secretary does not
21 renew a certification, the Secretary may
22 not continue to detain the alien under sub-
23 paragraph (B)(ii)(II).

24 “(ii) DELEGATION.—Notwithstanding
25 section 103, the Secretary of Homeland

1 Security may not delegate the authority to
2 make or renew a certification described in
3 item (bb), (cc), or (dd) of subparagraph
4 (B)(ii)(II) below the level of the Assistant
5 Secretary for Immigration and Customs
6 Enforcement.

7 “(iii) HEARING.—The Secretary of
8 Homeland Security may request that the
9 Attorney General or the Attorney General’s
10 designee provide for a hearing to make the
11 determination described in item (dd)(BB)
12 of subparagraph (B)(ii)(II).

13 “(D) RELEASE ON CONDITIONS.—If it is
14 determined that an alien should be released
15 from detention by a Federal court, the Board of
16 Immigration Appeals, or if an immigration
17 judge orders a stay of removal, the Secretary of
18 Homeland Security, in the exercise of the Sec-
19 retary’s discretion, may impose conditions on
20 release as provided under paragraph (3).

21 “(E) REDETENTION.—The Secretary of
22 Homeland Security, in the exercise of the Sec-
23 retary’s discretion, without any limitations
24 other than those specified in this section, may
25 again detain any alien subject to a final re-

1 removal order who is released from custody, if re-
2 removal becomes likely in the reasonably foresee-
3 able future, the alien fails to comply with the
4 conditions of release, or to continue to satisfy
5 the conditions described in subparagraph (A),
6 or if, upon reconsideration, the Secretary, in
7 the Secretary's sole discretion, determines that
8 the alien can be detained under subparagraph
9 (B). This section shall apply to any alien re-
10 turned to custody pursuant to this subpara-
11 graph, as if the removal period terminated on
12 the day of the redetention.

13 “(F) REVIEW OF DETERMINATIONS BY
14 SECRETARY.—A determination by the Secretary
15 under this paragraph shall not be subject to re-
16 view by any other agency.”.

17 (e) SEVERABILITY.—If any of the provisions of this
18 section, any amendment made by this section, or the appli-
19 cation of any such provision to any person or cir-
20 cumstance, is held to be invalid for any reason, the re-
21 mainder of this section, the amendments made by this sec-
22 tion, and the application of the provisions and amend-
23 ments made by this section to any other person or cir-
24 cumstance shall not be affected by such holding.

25 (f) EFFECTIVE DATES.—

1 (1) APPREHENSION AND DETENTION OF
2 ALIENS.—The amendments made by subsection (c)
3 shall take effect on the date of the enactment of this
4 Act. Section 236 of the Immigration and Nationality
5 Act, as amended by subsection (c), shall apply to
6 any alien in detention under provisions of such sec-
7 tion on or after such date of enactment.

8 (2) ALIENS ORDERED REMOVED.—The amend-
9 ments made by subsection (d) shall take effect on
10 the date of the enactment of this Act. Section 241
11 of the Immigration and Nationality Act, as amended
12 by subsection (d), shall apply to—

13 (A) all aliens subject to a final administra-
14 tive removal, deportation, or exclusion order
15 that was issued before, on, or after the date of
16 the enactment of this Act; and

17 (B) acts and conditions occurring or exist-
18 ing before, on, or after such date of enactment.